EDITOR'S NOTE

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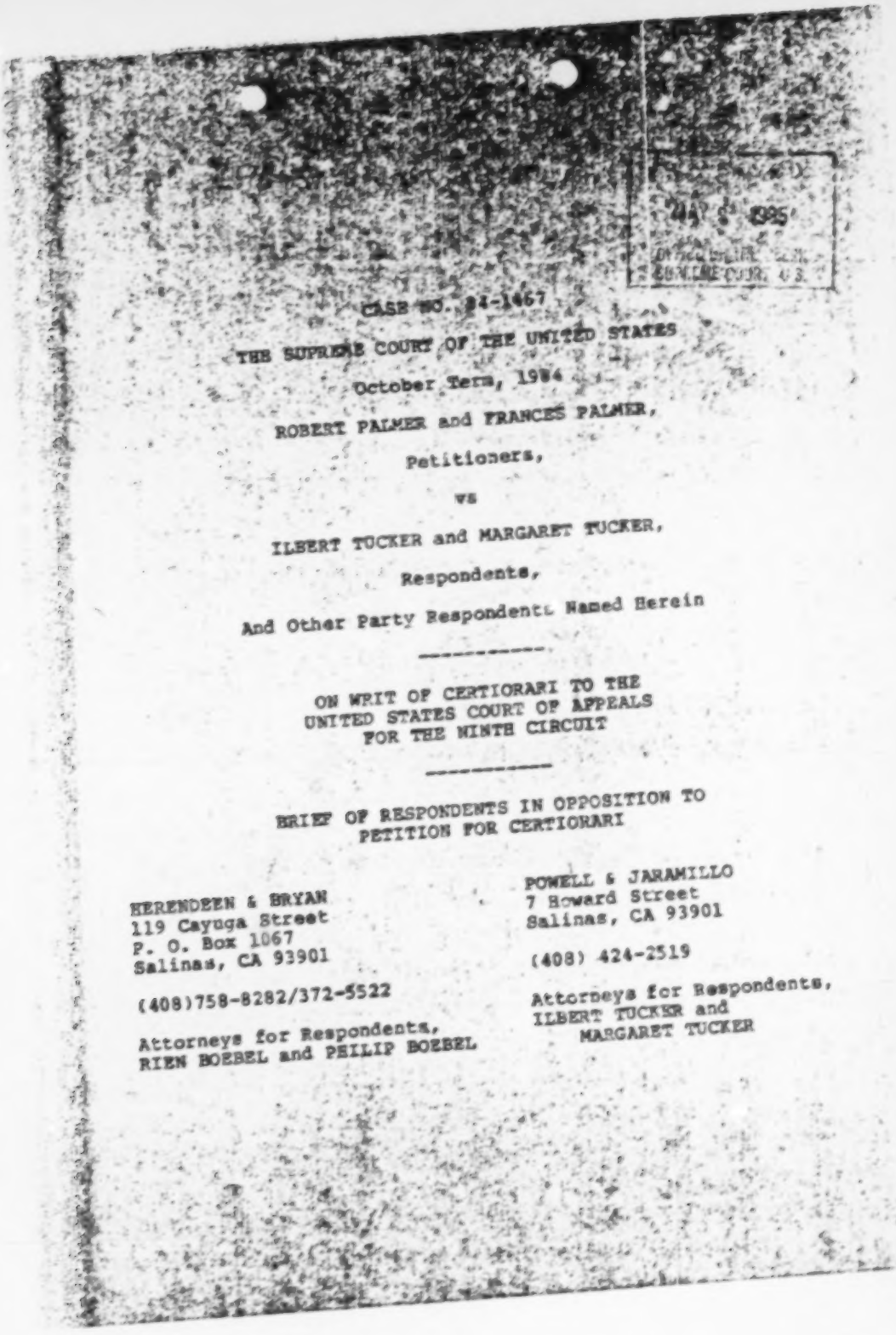

(3)

CASE NO. 84-1467

THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT PALMER and FRANCES PALMER,

Petitioners,

vs

ILBERT TUCKER and MARGARET TUCKER,

Respondents,

And Other Party Respondents Named Herein

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO
PETITION FOR CERTIORARI

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MARGARET TUCKER

788

Questions Presented For Review

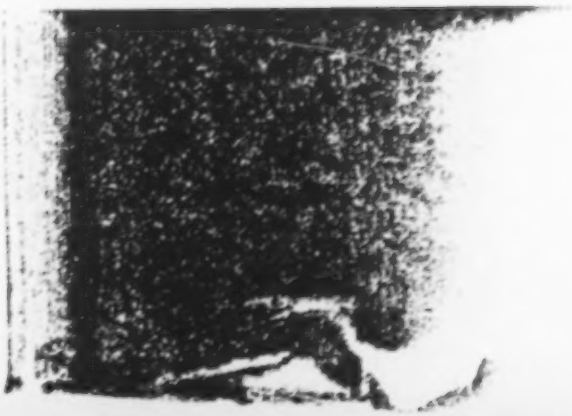
1. Petitioner seeks to determine the constitutionality of the power of the Bankruptcy Judge to appoint trustees, appraisers and attorneys.

2. Petitioner seeks review of the denial of a writ of mandate sought to remove a Bankruptcy Judge and a Judge of the District Court.

3. Petitioner seeks a writ of mandamus against a Panel of the Court of Appeals, the Chief District Judge and Chief Circuit Judge.

4. Petitioner seeks review of the Court of Appeals affirmance of District Court orders expunging a Lis Pendens, approving attorney fees and costs.

5. Petitioner seeks review of the Court of Appeals affirmance of District Court order upholding orders and decision of Bankruptcy Court denying a request to amend pleadings; vacating a compromise and determining the amount of damages due petitioner.



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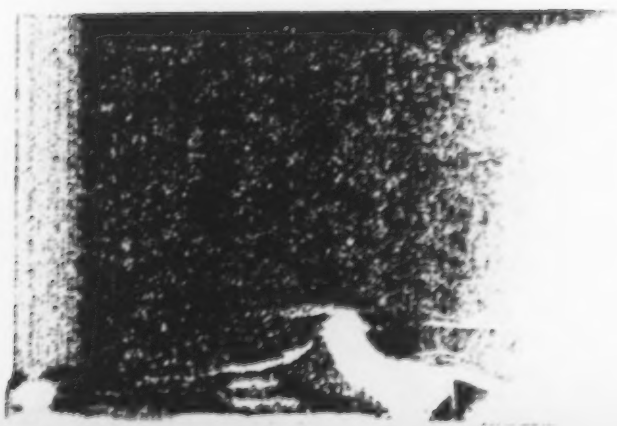
PARTIES

Ilbert Tucker and Margaret Tucker, and Philip Boebel and Rien Boebel, Respondents, Ralph Duvall and Margaret Duvall, and Mr. and Mrs. George Robinette III, Interested Parties on Notice,

Honorable Seymour J. Abrahams, Respondent
Honorable Marilyn Hall Patel, Respondent,
Honorable Robert Peckham, Respondent
Honorable James R. Browning, Respondent
Honorable Jerome Farris, Respondent
Honorable Arthur L. Alarcon, Respondent
Honorable William A. Norris, Respondent



AUTHORITES

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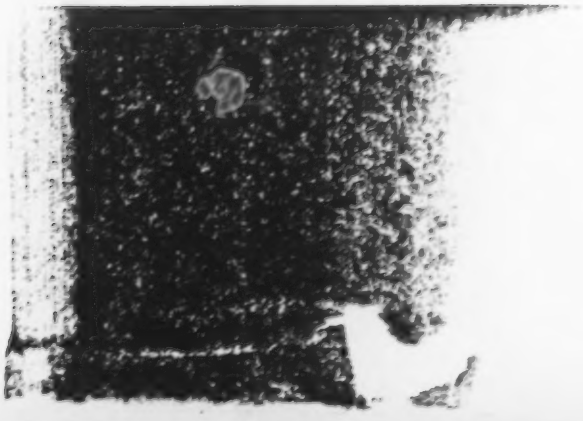


ARGUMENT

The Petition for Certiorari should not be granted because there are no issues raised in the Petition which are within the considerations governing review on Certiorari set forth in Rule 17.

Neither opinion of the Court of Appeals (Appendix Pages 71-78 and 79-84) represents a decision in conflict with another Court of Appeals; nor a decision on "a federal question in a way in conflict with a state court of last resort"; or a departure from "the accepted and usual course of judicial proceedings"; nor "sanctioned such a departure by a lower court". (Rule 17.1(a))

There are no significant federal questions decided below. In fact, in the BOEBEL matter, the District Court and the Court of Appeals applied the law of the State of California and did so in conformity with the decisions of the Courts of that State. (Appendix Pages 85-91 and 82-84)

Moreover, those issues encompassed within the request for mandamus and the request for constitutional review were determined not to have been raised in the courts below and have not been the subject of Appellate review. (Appendix Pages 73-76). Therefore, this court should not consider them in the absence of such review. (Volume 17, Wright and Miller, Federal Practice and Procedure, Section 4036 at 27-28)

Finally, there is absolutely no credible support in the Petition for the issuance of any form of writ to deal with the conduct of the Federal Judiciary in this matter.

CONCLUSION

Accordingly, the Petition should be denied and this Court in its review should determine that petitioner's document reflects the motives and actions of a vexatious and bad faith litigant and appropriate sanctions, in the form of attorney fees and costs, should be levied against him as provided in the decision of Alyeska Pipeline Service Co. vs Wilderness Society, 421 U.S. 240 at 257-259 (1975).

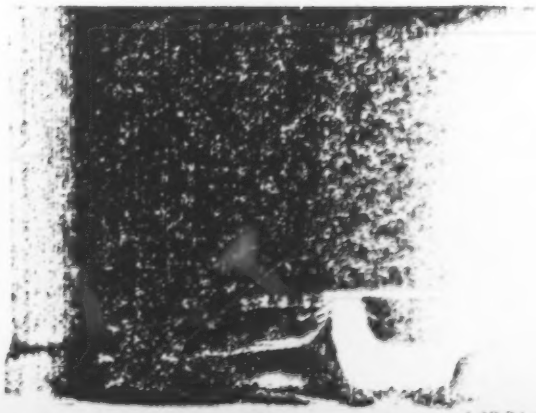
Dated: May 1, 1985.

HERENDEEN & BRYAN

By: _____
Robert P. Herendeen
Attorney for Respondents,
PHILIP BOEBEL and
RIEN BOEBEL

POWELL & JARAMILLO

By: _____
Dennis Powell
Attorney for Respondents,
ILBERT TUCKER and
MARGARET TUCKER



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Type or Print Name Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as _____

_____

On _____ 19___.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the county of Monterey, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 119 Cayuga Street, Salinas, CA 93901

On May 1, 1985, I served the foregoing document described as BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

_____

on the parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Robert Palmer, In Pro Per
1819 Newcastle Drive
Los Altos, CA 94022

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Salinas, California.

Executed on May 1, 1985, at Salinas, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 19___, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Virginia Friedman

Type or Print Name

Virginia Friedman

Signature

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